

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANNI STEINER,

Petitioner,

v.

DOUG WADDINGTON,

Respondent.

Case No. C06-5143 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
HABEAS CORPUS PETITION WITH
PREJUDICE

The Magistrate Judge recommends this habeas corpus petition be denied and dismissed with prejudice. The Petitioner challenges a conviction by jury trial for one count of first degree child molestation and one count second degree child molestation and one count third degree child molestation. The Petitioner raises three grounds for review: (1) sufficiency of the evidence, (2) improper “Golden Rule” argument by prosecutor in closing, and (3) prosecutor’s closing improperly shifted burden of proof.


As detailed by the Magistrate Judge, the first two issues concerning sufficiency of evidence and the “Golden Rule” argument are unexhausted and procedurally barred. See, Coleman v. Thompson, 501 U.S. 722, 750 (1991); Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.

1 Cupp, 768 F.2d 1083, 1086 (9th Cir.1985). Alternatively, these two issues are without merit. The
2 third issue regarding shifting the burden of proof is also without merit. The Washington Court of
3 Appeals conducted the proper review and its ruling is not a decision that was contrary to, or involved
4 an unreasonable application of, clearly established federal law, as determined by the Supreme Court.
5 Nor is the state court's ruling a decision that was based on an unreasonable determination of the
6 facts in light of the evidence presented to the state courts.

7 The Court, having reviewed the petition for writ of habeas corpus, Petitioner's memorandum
8 in support of petition, the response, the Report and Recommendation of Magistrate Judge J. Kelly
9 Arnold, objections to the Report and Recommendation, and the remaining record, does hereby find
10 and ORDER:

- 11 (1) The Court adopts the Report and Recommendation;
- 12 (2) Petitioner's writ of habeas corpus [Dkt. # 1] is **DENIED** and **DISMISSED WITH**
13 **PREJUDICE**; and
- 14 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
15 Respondent and to the Hon. J. Kelly Arnold.

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17 DATED this 23rd day of August, 2006.

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22 FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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